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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Dowan Hall,  
10                                      Petitioner,  
11 v.  
12 Charles L. Ryan, *et al.*,  
13                                      Respondents.  
14

No. CV-17-04118-PHX-JJT (MHB)  
**ORDER**

15            At issue is the Report and Recommendation (“R&R”) (Doc. 12) submitted by  
16 United States Magistrate Judge Michelle H. Burns, recommending that the Court deny and  
17 dismiss as untimely the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254.  
18 (Doc. 1.) The Court initially entered an Order adopting the R&R and its reasoning and  
19 dismissing the Petition when Petitioner failed to file objections. (Doc. 13.) But Petitioner  
20 showed good cause for vacatur of that Order and judgment in the form of excusable neglect,  
21 and the Court vacated the judgment and gave Petitioner additional time to file objections.  
22 (Doc. 17.) The Court’s Order, entered October 28, 2019, gave Petitioner 45 days from the  
23 date of entry of the Order—or until December 13, 2019—to file his Objections. Petitioner  
24 thereafter filed Objections to the R&R (Doc. 23) on January 2, 2020, which despite their  
25 potential untimeliness, the Court has nonetheless considered, along with Respondent’s  
26 Reply to those Objections (Doc. 25.)

27            The Court concludes Judge Burns’ analysis and recommendation are correct and it  
28 will adopt same. The Arizona Court of Appeals affirmed Petitioner’s convictions and

1 sentences November 4, 2010. They became final for purposes of seeking collateral review  
2 thirty days later—on December 6, 2010. The limitations period for initiating these  
3 proceedings started running that day, and expired one year later absent tolling, on  
4 December 6, 2011. Petitioner did not file his Petition until November 8, 2017. His Petition  
5 is thus nearly six years late. He therefore would have to demonstrate statutory or equitable  
6 tolling of that deadline for the Court to consider the merits of his Petition, and he makes  
7 no argument for equitable tolling.

8 Statutory tolling occurs when a defendant in a state criminal action timely files a  
9 notice requesting post conviction relief pursuant to Rule 32, Ariz. R. Crim. P. But the key  
10 requirement is “timely” filing of that notice. Rule 32.4 provides in relevant part that “a  
11 defendant must file the notice for a claim under Rule 32.1(a) . . . within 30 days after the  
12 issuance of the mandate in the direct appeal.” Rule 32.4(b)(3)(A), Ariz. R. Crim. P. As set  
13 forth above, and in Judge Burns’s R&R, the mandate on Petitioner’s state appeal issued  
14 December 6, 2010, and under Rule 32.4(b)(3)(A), he had until January 5, 2011, to file his  
15 PCR notice. He did not do so until November 20, 2014—nearly three years too late. His  
16 PCR notice was therefore untimely, did not alter the date his state conviction became final  
17 for purposes of AEDPA, and did not statutorily toll the limitations period for filing his  
18 Petition to this Court. Were the Court to rule otherwise, deadlines to file federal habeas  
19 petitions would mean nothing and petitioners could “re-start the clock” on AEDPA’s  
20 limitations period by filing state PCR notices whenever they pleased, even decades after  
21 their convictions became final. The Petition is thus untimely under AEDPA, and ineligible  
22 for statutory or equitable tolling, as Judge Burns concluded.

23 Petitioner filed five single-sentence objections, none of which address the issue of  
24 untimeliness of the PCR notice or the resultant lack of tolling the deadline to file the  
25 Petition here. He simply states conclusorily that his “one year began on the final decision  
26 of my PCR Sept. 15, 2017.” (Objection at 2.) With no authority whatsoever, this  
27 pronouncement is contrary to the rules and law set forth above. The Court will overrule the  
28 Objections.

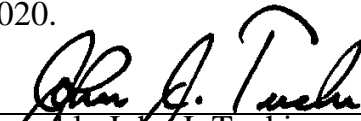
1 IT IS ORDERED overruling Petitioner's Objections (Doc. 23) and adopting in full  
2 the R&R in this matter. (Doc. 12.)

3 IT IS FURTHER ORDERED denying and dismissing with prejudice the Petition  
4 for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. (Doc. 1.)

5 IT IS FURTHER ORDERED denying a Certificate of Appealability or leave to  
6 proceed *in forma pauperis* on appeal. The Court finds the dismissal of the Petition is  
7 justified by a plain procedural bar, and that jurists of reason would not find the procedural  
8 ruling debatable.

9 IT IS FURTHER ORDERED directing the Clerk of Court to terminate this matter.

10 Dated this 18th day of February, 2020.

11   
12 Honorable John J. Tuchi  
13 United States District Judge  
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